

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

**ORDER DENYING APPLICATION
FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER
GRANTING OLIVER MAROTA'S
MOTION TO QUASH SUBPOENAS**

GUILLERMO HERRERA, *et al.*

Defendants.

As stated during the July 18 proceedings, defendant Guillermo Herrera's application for leave to file a motion for reconsideration of the order quashing subpoenas *duces tecum* served on counsel for Witness Oliver Marota is **DENIED** (Dkt. No. 4747).

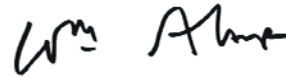
Reconsideration is warranted when an application for leave to file a reconsideration motion specifically shows that: (1) a material difference of fact or law exists from what was previously presented *and the party applying for reconsideration did not know of the difference of fact or law despite reasonable diligence*; (2) since the original order, new material facts or law have emerged; or (3) there was a manifest failure by the district court to consider material facts or dispositive legal arguments *which were presented to it*. Criminal L.R. 2-1; *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The application argues that reconsideration is appropriate because counsel was unaware that the subpoenaed materials contained work-product protected materials and counsel accordingly did not know a ruling may be made based on the work-product doctrine. This

1 assertion is not borne out by the record. The motion to quash specifically argued that the
2 subpoenas should be quashed because the work product protection had not been waived (Dkt.
3 No. 4720 at 7–10). Indeed, defendant Herrera’s written “response” to the motion (filed as a
4 separate motion to compel) argued that a voluntary waiver of the attorney-client privilege
5 automatically effectuates a waiver of the attorney work-product protection and provided
6 authority purportedly in support of this proposition (Dkt. No. 4724 at 8–9). This argument was
7 fully considered but ultimately rejected (Dkt. No. 4737). Counsel cannot now re-litigate the
8 matter based on arguments he failed to present despite the opportunity to do so. The original
9 order will not be reconsidered.

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11 **IT IS SO ORDERED.**

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13 Dated: July 20, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE